

Delhi High Court
Delhi High Court
UpSC vs Rk Jain on 13 July, 2012
* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 17.01.2012

% Judgment delivered on: 13.07.2012 + W.P.(C) 1243/2011 & C.M. No. 2618/2011 (for stay) UPSC
Petitioner Through: Mr. Naresh Kaushik & Ms. Aditi

Gupta, Advs.

Versus

RK JAIN Respondent Through: Mr. Prashant Bhushan & Mr. Pranav

Sachdeva, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J.

1. The present writ petition is directed against the decision of the Central Information Commission (hereinafter referred to as the "CIC") dated 12.01.2011 passed in Appeal No. CIC/WB/A/2009/001004- SM, preferred under Section 19 of the Right to Information Act, 2005, (hereinafter referred to as the "Act") whereby the petitioner has been directed to provide the relevant records in its possession as sought by the Respondent herein.

W.P. (C) No. 1243/2011 Page 1 of 32

2. The respondent by an application filed under Section 6 of the Act, sought the following Information from the petitioner: "A. Please provide inspection of the records, documents, note sheets, manuscripts, records, reports, office memorandum, part files and files relating to the proposed disciplinary action and/or imposition of penalty against Shri G.S. Narang, IRS, Central Excise and customs Officer of 1974 Batch and also inspection of records, files, etc., relating to the decision of the UPSC thereof. Shri G.S. Narang is presently posted as Director General of Inspection Customs and Central Excise.

B. Please provide copies of all the note sheets and the final decision taken regarding imposition of penalty/ disciplinary action and decision of the UPSC thereof."

3. The Central Public Information Officer (CPIO) of the petitioner, however, declined to provide the same on the ground that the information sought pertained to the disciplinary case of Shri G. S. Narang, which was of personal nature, disclosure of which has no relationship to any public activity or interest. It further stated that the disclosure of the same may infringe upon the privacy of the individual and that it may not be in the larger interest. The petitioner, therefore, claimed exemption from disclosing the information under Section 8(1)(j) of the Act.

4. The Respondent, consequently, filed an appeal under Section 19 of the Act, before the 1st Appellate Authority of the Petitioner. The Appellate Authority dismissed the Appeal on the same ground that the information sought was exempted from disclosure under Section 8(1)(j) of the Act.

W.P. (C) No. 1243/2011 Page 2 of 32

5. Being aggrieved by the said decision, the Respondent preferred an appeal before the CIC. Setting aside the decision of the First Appellate Authority, the CIC held as follows:

"4. After carefully considering the facts of the case and the submissions made by both parties, we are of the view that the CPIO was not right in denying this information. As far as the UPSC is concerned, the Respondent informed, it receives references from the Ministries and

Departments in disciplinary matters to give its

comments and recommendations on individual

cases. In this case too, the UPSC had been consulted and that it had offered its comments and views to the Government. Whatever records it holds in

regard to this case will have to be disclosed because this cannot be classified as personal information merely on the ground that it concerns some

particular officer. Our attention was drawn to a Division Bench ruling by the High Court of Kerala in the WA No. 2781/2009 in which the Court had held that the

information sought by an employee, from his employer, in respect of domestic enquiry and confidential reports of his colleagues would not amount to personal information as provided under Section 8(1)(j) of the Right to Information (RTI) Act. In other words, information regarding the disciplinary matters against any employee cannot be withheld by claiming it to be personal Information.

5. In the light of the above, we direct the CPIO to invite the Appellant on any mutually convenient

date within 15 working days from the receipt of this order and to show him the relevant records in the possession of the UPSC for his inspection. After Inspection, if the Appellant chooses to get the photocopies of some of those records, the CPIO shall provide the same free of cost." (emphasis supplied)

Petitioner's Submissions

6. The Petitioner assails the decision of the CIC, in the present writ petition, on several grounds. The Petitioner submits that the information sought by the Respondent at point A of his RTI application W.P. (C) No. 1243/2011 Page 3 of 32 is not with the Petitioner. It is stated by the Petitioner that the said information relates to the actions of the concerned Ministry/ Department and as such no record thereof is available or held with the Petitioner. As regards rest of the Information sought by the Respondent, it is submitted that the same is exempt from disclosure under Section 8(1)(e), 8(1)(g) and 8(1)(j) of the Act. The relevant extract of Section 8 of the Act reads as follows: "Section 8 - Exemption from disclosure of information (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

x x x x x x x x (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

x x x x x x x x (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

x x x x x x x x (j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person;

x x x x x x x x" W.P. (C) No. 1243/2011 Page 4 of 32

7. The Petitioner claims exemption under Section 8 (1)(j) of the Act on the basis that the disclosure of the information sought would cause unwarranted invasion of the privacy of the concerned charged officer. The Petitioner also submits that disclosure would not serve any larger public interest and would rather expose and make public- vulnerable and sensitive information relating to third party(s). The petitioner submits that the CIC erred in relying upon the decision of the Kerala High Court in WA No. 2781/2009 titled Centre for Earth Science Studies vs. Dr. Mrs. Anson Sebastian & the State Information Commission.

8. It is submitted by the Petitioner that the information sought for by the Respondent includes not only information that is personal to a third party i.e. the charged officer, but also contains information relating to the particular views and opinions of persons/ officers who contributed to the disciplinary proceedings against the charged officer. This opinion was given in trust and confidence and as such is held by the Petitioner in its fiduciary capacity, and is thereby exempt under Section 8(1)(e) of the Act. It is submitted that file notings pertaining to disciplinary cases are exempt from disclosure under the aforesaid section. To further his submission, the petitioner has placed reliance upon the judgment of this Court in W.P. (C) No. 12367/2009 and LPA No. 418/2010 titled Ravinder Kumar vs. Central Information Commission & Ors., the judgment of the Supreme Court in Institute of Chartered Accountants of India vs. Shaunak H. Satya and W.P. (C) No. 1243/2011 Page 5 of 32 others, (2011) 8 SCC 781, and; the decision of the CIC in Shri K.L. Balbani vs. Directorate General of Vigilance, Customs & Central Excise dt. 16.09.2009.

9. Further, it is submitted that the disclosure of such information besides endangering the life and safety of the persons concerned, will also disclose the assistance that was given by the officers during the Disciplinary proceeding for enforcement of law. Consequently, it is argued, that the disclosure of the information sought would be exempt under Section 8(1)(g) of the Act.

10. The Petitioner contends that order of the CIC is unsustainable in law in as much, as, it is contrary to the decisions of the concurrent Benches of the CIC. Moreover, it has rendered its decision while this Court is seized of a similar issue in W.P. (C) No. 13205/2009 titled UPSC vs. C.L. Sharma.

Respondent's Submissions

11. The Respondent, on the other hand, has at the outset submitted that the CIC has merely directed the disclosure of the records in possession of the UPSC. It has not directed the Petitioner to procure records from the concerned Ministries or Departments and then to make them available to the Respondent for inspection.

12. The Respondent submits that the information directed to be disclosed to the Respondent, by the Impugned order, is not exempted W.P. (C) No. 1243/2011 Page 6 of 32 under Section 8 (1)(e), 8(1)(g), or 8(1)(j) of the Act. It is further submitted that the CPIO and the first Appellate Authority had merely claimed exemption

under Section 8(1)(j) of the Act, and that the Petitioner cannot, at this stage, be permitted to introduce new grounds by claiming exemption under Section 8(1)(g) and 8(1)(e) of the Act. It is also contented that there is no fiduciary relationship involved in the present case and the disclosure of information would not endanger the life and safety of anyone. Hence, the information sought is not exempt under Section 8(1)(e) and 8(1)(g) of the Act. It is also submitted that the exemption under Section 8(1)(e) and (j) is not available as it would be in the larger public interest to disclose the same.

13. As regards the exemption under Section 8(1)(j), it is submitted by the Respondent that disclosure of the information permitted by the impugned order relates to the public activity of public servants. It can, by no stretch of imagination, be treated as personal information of a Public Servant. The information sought is not personal information relating to a third party, but is contained in the records of the UPSC itself. It is further submitted that the disclosure of the information sought is in the larger public interest, since the case not only relates to serious irregularities committed in the administration of taxation cases and adjudication of offence, but also involves different opinions given by two public authorities, i.e. the Central Vigilance Commission and the Petitioner on the basis of the same records, thereby making it necessary to see whether same or different records were produced or W.P. (C) No. 1243/2011 Page 7 of 32 any part of the records were withheld from or by the Petitioner, and also whether a proper method and procedure was adopted by the Petitioner. It is contented that the disclosure would promote transparency and accountability, thereby adding to the credibility to the Petitioner itself.

14. The Respondent submits that the judgment of this Court in Ravinder Kumar (Supra), relied upon by the petitioner, have no applicability to the present case and that the CIC has rightly followed the judgment of the Kerala High Court in Centre for Earth Science Studies (Supra). It is also submitted that the mere pendency of some similar matter before this Court would not preclude the CIC to decide the appeal pending before it.

Discussion

15. The principal contention of the Petitioner, right from the stage when the RTI application was considered by the CPIO up till the stage of consideration of the Second Appeal before the CIC, was that the information sought for by the Respondent is exempted from disclosure under Section 8(1)(j) of the Act. Therefore, I proceed to deal with it first.

16. The exemption under Section 8(1)(j) is available in respect of "personal information" of an individual. For the exemption to come into operation, the personal information sought: W.P. (C) No. 1243/2011 Page 8 of 32 (i) Should not have relation to any public activity, or to public interest OR,

(ii) Should be such as to cause unwarranted invasion of the privacy of the individual. However, the exemption is not available in a case where larger public interest justifies such disclosure.

17. The word "personal" means appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property. [See Black's Law Dictionary, Sixth Edition].

18. The word "information" is defined in Section 2(f) of the Act as meaning:

"any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force".

19. Therefore, "personal information" under the Act, would be information, as set forth above, that pertains to a person. As such it takes into its fold possibly every kind of information relating to the person. Now, such

personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person.

W.P. (C) No. 1243/2011 Page 9 of 32

20. The term "personal information" under section 8(1)(j) does not mean information relating to the information seeker, or the public authority, but about a third party. The section exempts from disclosure personal information, including that which would cause "unwarranted invasion of the privacy of the individual". If one were to seek information about himself, the question of invasion of his own privacy would not arise. It would only arise where the information sought relates to a third party. Consequently, the exemption under Section 8(1)(j) is as regards third party personal information only.

21. Further, the personal information cannot be that of a "public authority". No public authority can claim that any information held by it is personal to it. There is nothing "personal" about any information held by a public authority in relation to itself. The expression "personal information" used in Section 8(1)(j) means information personal to any "person", that the public authority may hold. For instance, a public authority may in connection with its functioning require any other person to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if the information sought satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity (of the person who has provided the information, or who is the source of the information, or to whom that information pertains), or to public W.P. (C) No. 1243/2011 Page 10 of 32 interest, or which would cause unwarranted invasion of the privacy of the individual (unless larger public interest justifies disclosure). The use of the words "invasion of the privacy of the individual", instead of "an individual", shows that the legislative intent was to connect the expression "personal information" with the word "individual".

22. Merely because information that may be personal to a third party is held by a public authority, a querist does not become entitled to access it, unless the said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private information (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it. Therefore, for example, a querist cannot seek the personal or private particulars provided by a third party in his application made to the passport authorities in his application to obtain a passport, merely because such information is available with the passport authorities, which is a public authority under the Act. The querist must make out a case (in his application under Section 6 of the Act) justifying the disclosure of the information sought on the touchstone of clause (j) of Section 8(1) of the Act.

23. Proceeding further, I now examine the expressions "Public activity", "Public interest" and "Privacy of the individual" used in Section 8(1)(j) of the Act.

W.P. (C) No. 1243/2011 Page 11 of 32

24. "Public activity" qua a person are those activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act. Such information could include information relating to his physical and mental health, his qualifications etc., as the said information has a bearing on the discharge of his public duty, but would not include his other personal information such as, his taste in music, sport, art, his family, his family

background etc., which has no bearing/relation to his act of performing his duties as a surgeon.

25. "Public interest" is also a ground for taking away the exemption from disclosure of personal information. Therefore, a querist may seek personal information of a person from a public authority in public interest. The second half of the first part of clause (j) of Section 8(1) shows that when personal information in respect of a person is sought, W.P. (C) No. 1243/2011 Page 12 of 32 the authority concerned shall weigh the competing claims i.e., the claim for the protection of personal information of the concerned person on the one hand, and the claim of public interest on the other, and if "public interest" justifies disclosure, i.e., the public interest outweighs the need for protection of personal information, the concerned authority shall disclose the information.

26. For example, a querist may seek from the income tax authorities- the details of the income tax returns filed by private individual/juristic entity - if the querist can justify the disclosure of such personal information on the anvil of public interest. The authorities would, in such cases, be cautious to ensure that the ground of "public interest" is not routinely used as a garb by busy bodies to pry on the personal affairs of individual private citizens/entities, as it would be against public interest (and not in public interest) to permit such personal information of third parties to fall into the hands of anybody or everybody.

27. At this stage, I may digress a little and observe that whenever the querist applicant wishes to seek information, the disclosure of which can be made only upon existence of certain special circumstances, for example- the existence of public interest, the querist should in the application (moved under Section 6 of the Act) disclose/ plead the special circumstance, so that the PIO concerned can apply his mind to it, and, in case he decides to issue notice to the W.P. (C) No. 1243/2011 Page 13 of 32 concerned third party under Section 11 of the Act, the third party is able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether, or not, the special circumstances exist in a given case.

28. I may also observe that public interest does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are affected. The expression "public interest" is not capable of a precise definition and has not a rigid meaning and is elastic and takes its colors from the statute in which it occurs, the concept varying with the time and the state of the society and its needs. [See Advanced Law Lexicon, Third Edition].

29. The second part of clause (j) of Section 8(1) appears to deal with the scope of defence founded on the right of privacy of an individual. The tussle between the right of privacy of an individual and the right of others to seek information which may impinge on the said right of privacy, is what the said clause seeks to address.

30. The right to privacy means the right to be left alone and the right of a person to be free from unwarranted publicity. Black's Law Dictionary says that the terms "right to privacy" is a generic term encompassing various rights recognized to be inherent in concept of ordered liberty, and such rights prevent government interference in W.P. (C) No. 1243/2011 Page 14 of 32 intimate personal relationship's or activities, freedoms of individual to make fundamental choices involving himself, his family, and his relationship with others. A man has the right to pass through this world, if he wills, without having his picture published, his business enterprises discussed, his successful experiments written for the benefit of others, or his eccentricities commented upon by any means or mode. It is based on the theory that everyone has the right of inviolability of the person.

31. The "right to privacy", even though by itself has not been defined by our Constitution and though, as a concept, it may be too broad to define judicially, the Supreme Court has recognised by its liberal interpretation that "right to privacy" is an integral part of the right to personal liberty under Article 21 of the Constitution of India.

32. In *Rajagopal vs. State of Tamil Nadu*, AIR 1995 SC 264, the Supreme Court had the occasion to comment on the origin, basis, nature and scope of the right to privacy in India. Mr. Justice B.P. Jeevan Reddy, referred to the earlier decision of the Supreme Court in *Kharak Singh and Ors. v. State of Uttar Pradesh and Ors.*, 1964 (1) SCR 332: AIR 1963 SC 129 and the decision in *Gobind v. State of Madhya Pradesh*, 1975 (2) SCC 148: AIR 1975 SC 1378. In the later case, Mathew, J., speaking for himself, Krishna Iyer and Goswami, JJ. traced the origins of this right and also pointed out how the said right has been dealt with by the United States Supreme Court in two of its W.P. (C) No. 1243/2011 Page 15 of 32 well-known decisions in *Griswold v. Connecticut*, [1965] 385 U.S. 479 : 14 L.Ed. 2d. 510 and *Roe v. Wade*, [1973] 410 U.S. 113. After referring to *Kharak Singh* (supra) and the said American decisions, the learned Judge stated the law in the following words: "...privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test....

...privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of

defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values.

Any right to privacy must encompass and protect

the personal intimacies of the home, the family, marriage, motherhood, procreation and child

rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty....

There are two possible theories for protecting

privacy of home. The first is that activities in the home harm others only to the extent that they

cause offence resulting from the mere thought that individuals might be engaging in such activities and that such 'harm' is not constitutionally protectible by the State. The second is that individuals need a place of sanctuary where they can be free from

societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that W.P. (C) No. 1243/2011 Page 16 of 32 may reflect the values of their peers rather than the realities of their natures. [See 26 Stanford Law Rev. 1161, 1187]

The right to privacy in any event will necessarily have to go through a process of case-by-case

development. Therefore, even assuming that the

right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute.

The European Convention on Human Rights, which came into force on September 3, 1953, represents a valiant attempt to tackle the new problem. Article 8 of the Convention is worth citing [See "Privacy and

Human Rights", Ed. AH Robertson, p. 176]:

1. Every one has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public

authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others." (emphasis supplied)

33. Mr. Justice B.P. Jeevan Reddy, summarized the concept of right to privacy as under:

"(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this

country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be W.P. (C) No. 1243/2011 Page 17 of 32 violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interest of decency [Article 19 (2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being

publicised in press/media.

(3) There is yet another exception to the Rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to

their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as

explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and the Parliament and Legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule." (Emphasis supplied)

W.P. (C) No. 1243/2011 Page 18 of 32

34. It follows that the "privacy" of a person, or in other words his "private information", encompasses the personal intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. "Personal information", on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, "private information" is a part of "personal information". All that is private is personal, but all that is personal may not be private. A person has a right to keep his private information, or in other words, his privacy guarded from disclosure. It is this right which has come to be recognised as fundamental to a person's life and liberty, and is accordingly protected from unwarranted/unauthorised invasion under the Act, and can be overridden only in a larger public interest.

35. The use of the expression "unwarranted" before "invasion of the privacy of the individual" and the expression "larger" before "public interest" needs attention. The use of "unwarranted", as aforesaid, shows that the PIO, Appellate Authority or the CIC, as the case may be, should come to a definite finding upon application of mind to all the relevant considerations and submissions of the querist and the third party - whose privacy is at stake, that the disclosure of the information, which would cause invasion of the privacy of the individual is warranted, in the facts of the case. He should, therefore, come to the conclusion that even after application of the principle of severability (contained in Section 10 of the Act), it is necessary to W.P. (C) No. 1243/2011 Page 19 of 32 disclose the personal and private information in larger public interest. The expression "larger public interest" connotes that the public interest that is sought to be addressed by the disclosure of the private information, serves a large section of the public, and not just a small section thereof. Therefore, if the information has a bearing on the state of the economy; the moral values in the society; the environment; national safety, or the like, the same would qualify as "larger public interest".

36. Take for instance, a case where a person is employed to work in an orphanage or a children's home having small children as inmates. The employer may or may not be a public authority under the Act. That person, i.e. the employee, has a background of child abuse, for which he has undergone psychiatric treatment in a government hospital. A querist could seek information regarding the medical and psychiatric treatment undergone by the person concerned from the government hospital where the person has undergone treatment, in larger public interest, even though the said information is not only personal, but private, vis-à-vis. the employee. The larger public interest in such a case would lay in protecting the children living in the orphanage/ children's home from possible child abuse.

37. In light of the above discussion, the following principles emerge for the exemption under Section 8(1)(j) to apply: W.P. (C) No. 1243/2011 Page 20 of 32 (i) The information sought must relate to "Personal information" as understood above of a third party. Therefore, if the information sought does not qualify as personal information, the exemption would not apply; (ii) Such personal information should relate to a third person, i.e., a person other than the information seeker or the public authority; AND

(iii) (a) The information sought should not have a relation to any public activity qua such third person, or to public interest. If the information sought relates to public activity of the third party, i.e. to his activities falling within the public domain, the exemption would not apply. Similarly, if the disclosure of the personal information is found justified in public interest, the exemption would be lifted, otherwise not;

OR

(iii) (b) The disclosure of the information would cause unwarranted invasion of the privacy of the individual, and that there is no larger public interest involved in such disclosure.

38. Let us now examine the claim of exemption under Section 8(1)(j) in the present case, in view of the aforesaid principles. The information sought by the Respondent relates to the proposed disciplinary action and/or imposition of penalty against Shri G.S. Narang, IRS, Central Excise and Customs Officer of 1974 Batch and the W.P. (C) No. 1243/2011 Page 21 of 32 decision/recommendation of the Petitioner

communicated to the concerned Ministry.

39. The Petitioner in the present case, being a constitutional body and thereby a "public authority" under the Act, cannot claim the exemption of personal information qua itself and its officials under Section 8(1)(j). Even otherwise, its act of tendering advice to the concerned Ministry on matters relating to disciplinary proceedings against a charged officer is in discharge of a public duty entrusted to it by the law itself, and is thereby a public activity. Consequently, the defence is also not available to the officers of the Petitioner with respect to their acts and conduct relevant to the discharge of their official duties.

40. The information sought, in the present case, also does not relate to the privacy of the charged officer. Disciplinary inquiry of the charged officer is with regard to the alleged irregularities committed by him while discharging public duties and public functions. The disclosure of such information cannot be regarded as invasion of his privacy.

41. Even otherwise, the disclosure of such information would be in the larger public interest, keeping in view the object of the Act, which is to promote transparency and accountability and also to contain corruption. The preamble of the Act, inter alia, states: "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order W.P. (C) No. 1243/2011 Page 22 of 32 to promote transparency and accountability in the working of every public authority,

And Whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And Whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And Whereas it is necessary to harmonise these conflicting interest while preserving the paramountcy of the democratic ideal;"

42. This Court in LPA No. 501/2009 titled Secretary General, Supreme Court of India vs. Subhash Chandra Aggarwal, dealing with the concept of â Right to Informationâ under the Act observed as under:

"30. Information is currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater will be the responsiveness, and greater the restrictions, greater the feeling of powerlessness and alienation. Information is basis for knowledge, which provokes thought, and without thinking process, there is no expression. "Knowledge" said James Madison, "will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it is but a prologue to farce or tragedy or perhaps both". The citizensâ right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world. " (emphasis supplied)

43. The Court, while explaining the importance and need of the Right, referred to the following observation of the Supreme Court in S.P. Gupta vs. Union of India, 1981 (Supp) SCC 87: W.P. (C) No. 1243/2011 Page 23 of 32 "65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational

votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind. But this important role people can fulfill in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government." (emphasis supplied)

44. After, having referred to a sea of judgments and scholarly excerpts, the Division Bench of this Court held as follows: "60. The decisions cited by the learned Attorney General on the meaning of the words "held" or "control" are relating to property and cannot be relied upon in interpretation of the provisions of the Right to Information Act. The source of right to information does not emanate from the Right to Information Act. It is a right that emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not repository of the right to information. Its repository is the constitutional rights guaranteed under Article 19(1)(a). The Act is merely an instrument that lays down statutory

procedure in the exercise of this right. Its

overreaching purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to help the governors

accountable to the governed. In construing such a statute the Court ought to give to it the widest operation which its language will permit. The Court will also not readily read words which are not there and introduction of which will restrict the rights of citizens for whose benefit the statute is intended." (Emphasis supplied)

W.P. (C) No. 1243/2011 Page 24 of 32

45. It is clear from the above, that the thrust of the legislation is to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority, unless its disclosure is exempted under the Act. The access to information is considered vital to the functioning of a democracy, as it creates an informed citizenry. Transparency of information is considered vital to contain corruption and to hold Government and its instrumentalities accountable to the governed citizens of this country.

46. The orders of the learned Single Judge and Division Bench of this Court in Ravinder Kumar (Supra) have no relevance for a variety of reasons. The order of the learned Single Judge, upholding the claim of exemption under Section 8(1)(j) raised by the public authority- to the disclosure of note sheets containing opinions and advices rendered by officials in respect of departmental proceedings- on the ground that the same was against public interest, had been made specifically in the facts and circumstances of that case. Further, the order of the Division Bench was an order dismissing an application for restoration of the LPA. It was not an order on merits. There was no decision on any legal proposition on merits rendered by the Court in the said order. Mere prima facie observations of the Division Bench do not constitute a binding precedent. The decisions in Ravinder Kumar (supra), therefore, do not even otherwise apply in the facts of the present case. W.P. (C) No. 1243/2011 Page 25 of 32

47. Reliance placed, by the Petitioner, on Shri K.L. Bablani (supra) is misplaced. Firstly, this is the view of the CIC and does not bind this Court. What can, however, be relied upon are the reasons contained in this decision to persuade this Court to form its view. The CIC held that the file notings relating to vigilance matters, on the basis of which administrative/disciplinary action has been taken may not be disclosed, except upon demonstration of public interest, as it could embarrass and put pressure on those making file notings regarding the officer whose conduct is under comment.

48. The concerns expressed in, and which swayed the decision of the CIC in Shri K.L. Balbani (supra) relied upon by the Petitioner, can be met by resort to Section 10 of the Act. However, those concerns cannot be a good reason to altogether deny information which, otherwise, is not exempt from disclosure under the law. Consequently, the defence set up by the petitioner, founded upon clause (j) of Section 8(1) is not tenable in this case.

49. The defences under Section 8(1)(e) and Section 8(1) (g) of the Act would also be of no avail to the Petitioner in the present case. This is so, not merely on account of it being an afterthought of the Petitioner to raise the same, but also because they are untenable in the facts of the present case.

50. The over-riding public interest involved in the present case, as aforesaid, would render inoperative the exemption under Section W.P. (C) No. 1243/2011 Page 26 of 32 8(1)(e) of the Act. Even otherwise, the exemption under Section 8(1)(e) of the Act would not apply since the information sought by the Respondent is not held by, or available with the petitioner in its fiduciary capacity. The Supreme Court in CBSE vs. Aditya Bandopadhyay, (2011) 8 SCC 497, laid down the test of determining fiduciary relationship as follows;

"41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words 'information available to a person in his

fiduciary relationship' are used in Section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or

beneficiaries who are to be expected to be

protected or benefited by the actions of the

fiduciary - a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a share-holder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the

examinee, with reference to the evaluated answer-books, that come into the custody of the examining body." (Emphasis supplied)

51. In the present case it cannot be said that the opinion /advice tendered by the officers of the petitioner in respect of Sh. G.S. Narang was on account of their position as that of a "beneficiary" and that the W.P. (C) No. 1243/2011 Page 27 of 32 position of the petitioner was that of a "trustee". The officers concerned who were involved in the opinion/advice making process acted in the discharge of their official/public duties. In any event, as aforesaid, the interest of such an officer can be effectively and sufficiently safeguarded by resort to Section 10 of the Act.

52. Reliance is placed by the petitioner, on the Judgment of the Supreme Court in Institute of Chartered Accountants of India vs. Shaunak H. Satya & Ors., (2011) 8 SCC 781. The Supreme Court, in the said decision, while referring to the test laid down in the Aditya Bandopadhyay (supra), observed as under:

"21. The instructions and 'solutions to questions' issued to the examiners and moderators in connection with

evaluation of answer scripts, as noticed above, is the intellectual property of ICAI. These are made available by ICAI to the examiners and moderators to enable them to evaluate the answer scripts correctly and effectively, in a proper manner, to achieve uniformity and consistency in evaluation, as a large number of evaluators and

moderators are engaged by ICAI in connection with the evaluation. The instructions and solutions to questions are given by the ICAI to the examiners and moderators to be held in confidence. The examiners and moderators are required to maintain absolute secrecy and cannot disclose the answer scripts, the evaluation of answer scripts, the instructions of ICAI and the solutions to questions made available by ICAI, to anyone. The examiners and

moderators are in the position of agents and ICAI is in the position of principal in regard to such information which ICAI gives to the examiners and moderators to achieve uniformity, consistency and exactness of evaluation of the answer scripts. When anything is given and taken in trust or in confidence, requiring or expecting

secrecy and confidentiality to be maintained in that behalf, it is held by the recipient in a fiduciary relationship." (Emphasis supplied)

W.P. (C) No. 1243/2011 Page 28 of 32

53. The aforesaid observation of the Supreme Court in *Institute of Chartered Accountants of India (Supra)* does not render support to the contention of the Petitioner in claiming exemption from disclosing the opinion/recommendations tendered by it to the Ministry. It is not the case of the petitioner that the files notings containing the opinions/views of its officers, and the ultimate final opinion/recommendation tendered by it to the Ministry were confidential or secret.

54. It is pertinent to note that there is no bar, per se, to the furnishing of opinions and advices in response to an application under the Act. The Supreme Court in *Khanapuram Gandaiah vs. Administrative Officer*, (2010) 2 SCC 1, while referring to Section 2 (f) of the Act, which defines "information", held as under: "10. x x x x x x x x x x This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed, especially in matters pertaining to judicial decisions." (emphasis supplied)

55. Therefore, what emerges from the aforesaid is that opinions/advices tendered/given by the officers (public officials) can be sought for under the Act, provided the same have not been tendered in confidence/secrecy and in trust to the authority concerned, i.e. to say- W.P. (C) No. 1243/2011 Page 29 of 32 in a fiduciary relationship. Since the petitioner has not been able to set up the same in the present case, as aforesaid, the claim of exemption under Section 8(1)(e) stands rejected.

56. A bare perusal of Section 8(1)(g) of the Act, makes it clear that the exemption would come into operation only if the disclosure of information would endanger the life or physical safety of any person or would identify the source of the information or assistance given in confidence for law enforcement or security purposes. The opinion/advice, which constitutes the information in the present case, cannot be said to have been given "in confidence for law enforcement or security purposes", as aforesaid. Therefore, that part of the clause would be inapplicable and irrelevant in the present case. So far as the petitioner's submission- that the disclosure of Information would endanger the life and safety of the officers who tendered their opinion/advices- is concerned, the same in my considered opinion, as aforesaid, in the facts of the present case, may be addressed- by resort to Section 10 of the Act. The exemption under Section 8(1)(g) of the Act, therefore, as claimed by the Petitioner, would be no ground for disallowing the disclosure of the information

(sought by the Respondent) in the facts of the present case.

57. At this stage, I may take note of the fact that the petitioner herein tendered to this court, after the judgment in the present case had been reserved, decisions of the CIC- wherein information sought W.P. (C) No. 1243/2011 Page 30 of 32 by RTI applicants with regard to disciplinary proceedings of charged officers, were held to be exempt from disclosure under Section 8(1)(h) of the Act on the grounds that the disciplinary proceedings/investigation were ongoing, and as such, disclosure of information sought would impede the process of investigation.

58. The said argument cannot be availed of by the petitioner herein as it was not raised at any stage (before and after the filing of the present petition), and no opportunity was afforded to the respondent herein to meet the same. Moreover, on the facts of this case, the argument premised upon clause (h) of Section 8(1) cannot be sustained. The information sought at point â Bâ relates to the note sheets and final opinion rendered by the UPSC regarding imposition of penalty/punishment on the charged officer. Such information, as is evident from a plain reading, relates to findings and opinion post investigation i.e., after the investigation is complete. Disclosure of such information cannot, be any means whatsoever be held to "impede the process of investigation" which could be raised only when an investigation is ongoing. As such the exemption under Section 8(1)(h) of the Act also cannot be raised in by the petitioner in the present case.

59. The petitionerâ s submission that the order of the CIC is unsustainable in as much as it is contrary to the decisions of the concurrent benches of the CIC is neither here nor there. The impugned W.P. (C) No. 1243/2011 Page 31 of 32 decision of the CIC had been made specifically in the facts and circumstances of the present case. As regards the Petitionerâ s submission that the CICâ s decision (Impugned order) is unsustainable since it was rendered while this Court was seized of a similar issue in UPSC v. C.L. Sharma (supra)- is concerned, the same in my view is entirely untenable. The pendency of the same issue in other cases before this Court does not preclude the CIC from dealing with the issues arising before it, unless there is a restraint on the CIC from doing so. There is nothing on record to suggest that this Court has, in UPSC v. C.L. Sharma (supra), put a blanket restraint on the CIC from dealing with the claim of exemption under Section 8(1)(j) of the Act. Therefore, the said submission also stands rejected.

60. In view of above, the decision of the CIC is upheld, subject to the modification that the petitioner may, examine the case with regard to applicability of Section 10 of the Act, in relation to the names of the officers who may have acted in the process of opinion formation while dealing with the case of charged officer Sh.G.S. Narang.

61. The petition is accordingly disposed of. The interim order stands vacated.

(VIPIN SANGHI)

JUDGE

JULY 13, 2012

SR/BSR'

W.P. (C) No. 1243/2011 Page 32 of 32